

PLANNING COMMISSION MINUTES

JULY 19, 2007

PUBLIC HEARING

New Business

CASE NO. 8735 AND 9007

NOTE: The following two cases, Case #8735 and Case #9007, were heard together, since they pertain to the same parcel of land and the requests were identical. The portion dealing with Case #8735 was heard first, followed by the portion dealing with Case #9007.

Change in zoning from OTF Office Tourist Facility to C-1 Commercial (2.0 acres) and C-2 Commercial (2.91 acres), a parking waiver to permit the bank and retail lots to exceed the maximum parking permitted by code, a variance of 7 feet to allow the proposed bank to be 32 feet in height, a waiver of a portion of required 30-foot parkway buffer along Old Henry Road, a waiver of a portion of the landscape buffer area along the vehicle use area adjacent to Terra View Trail, and a revised detailed district development plan under Docket No. 9-99-98 on a portion of the property known as Tax Block 3660, Lot 0009; also a change in the form district (related case: 9007) from Neighborhood to Suburban Workplace on a portion of the property located at 13800 Old Henry Trail Road on the north side of Old Henry Road and west of Bush Farm Road, being in Louisville Metro.

Owner/Applicant:	Terra Development Corporation c/o Carl K. Ray Jr. 13750 Old Henry Road Louisville, KY 40245
Attorney:	Deborah A. Bilitski Wyatt, Tarrant & Combs, LLP 500 West Jefferson Street Suite 2700 Louisville, KY 40202
Engineer/Designer:	Patrick Dominik Sabak, Wilson & Lingo Inc. 315 West Market Street Louisville, KY 40202
Existing Uses:	Vacant
Proposed Use:	Retail, bank (C-1 portion), Restaurants with outdoor seating (C-2 portion)
Council District:	19—Hal Heiner
Staff Case Manager:	Stephen Lutz, AICP

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Notice of this public hearing appeared in **The Courier Journal**, a notice was posted on the property, and notices were sent by first class mail to those adjoining property owners whose names were supplied by the applicants.

The staff report prepared for this case was incorporated into the record. The Commissioners received this report in advance of the hearing, and this report was available to any interested party prior to the public hearing. (Staff report is part of the case file maintained in Planning and Design Services offices, 444 S. 5th Street.)

The following spoke in favor of this request:

Deborah A. Bilitski, Wyatt, Tarrant & Combs, LLP, 500 West Jefferson Street
Suite 2700, Louisville, KY 40202

Patrick Dominik, Sabak, Wilson & Lingo Inc., 315 West Market Street, Louisville,
KY 40202

Carl Ray (applicant), Terra Development Corporation, 13750 Old Henry Road,
Louisville, KY 40245

The following spoke in opposition:

No one spoke.

The following spoke neither for nor against:

No one spoke.

Agency Personnel:

Stephen Lutz, Planning Supervisor

AGENCY TESTIMONY:

4:11:31 Before beginning his testimony, Mr. Lutz asked Legal Counsel if it was permissible to hear both cases at the same time, or if they had to be considered/voted on separately. Commissioner Ernst and Legal Counsel both said it was fine to hear both cases at the same time.

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4:12:12 Stephen Lutz presented the first case, listed under Case No. 8735. He showed a Power Point presentation with excerpts from the staff report, maps, and photos of the site and the surrounding area (see entire staff report for all details.) The applicant is proposing to rezone the property from OTF to C-1 and C-2 in order to construct two, 7,500 square foot (6,500 square foot inside, 1,000 square foot outside), restaurants on Lot 9 (the C-2 Commercial portion), and a 3,479 square foot bank and 5464 square foot retail building on Lot 10 (the C-1 portion). He said the site was rezoned to OTF under docket 9-99-98 to construct two hotels, which were never built. The property is currently vacant. Mr. Lutz explained the landscape waiver and variance requests.

4:18:17 Mr. Lutz then presented the second case, listed under Case No. 9007. He said this portion refers to the applicant's request to change the form district from Neighborhood to Suburban Workplace on a portion of the site. The site was rezoned to OR-3 under docket 9-99-98 to construct office buildings which were never built. The property is currently vacant. Mr. Lutz showed a Power Point presentation with excerpts from the staff report, maps, and photos of the site and the surrounding area (see entire staff report for all details.)

SUMMARY OF TESTIMONY OF PROPONENTS:

4:23:25 Deborah Bilitski, the applicant's representative, showed a Power Point presentation with maps and photos of the site and the surrounding area. There was some discussion of where Bush Farm Road will be located. She gave a history of the site and some former actions taken on this site. She showed the approved General Plan and explained where the portions of the site are that are being discussed today. She explained the applicant's justification for the landscape and parkway buffer waiver [see case file.] The buffer would be meandering to provide more interest than a straight 30-foot buffer. There is additional green area being added. She said a row of parking has been removed to make landscape islands in the parking area wider. Ms. Bilitski also explained the variance request (to allow a cupola on top of a bank.) She said the applicant has agreed to **an additional binding element (Binding Element #12)** stating that they will come back to the Planning Commission for approval of any building designs that have not yet been finalized. She pointed out that there are concept plans for the restaurants and the retail buildings available in the project booklets.

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4:30:28 Commissioner Queenan had a question about a concept rendering for the retail building. Ms. Bilitski explained about the concept plan.

4:31:20 Ms. Bilitski responded to a question from Commissioner Wells-Hatfield regarding a loading area.

4:31:57 In response to a question from Commissioner Wells-Hatfield, Carl Ray said the landscaping would be irrigated; however, irrigation is not permitted along the area near to the State Highway, by State statute.

SUMMARY OF TESTIMONY OF OPPONENTS:

No one spoke.

SUMMARY OF TESTIMONY OF THOSE NEITHER FOR NOR AGAINST:

No one spoke.

REBUTTAL:

There was no rebuttal, since no one spoke in opposition.

An audio/visual recording of the Planning Commission hearing related to this case is available in the Planning and Design Services offices. Please contact the Customer Service staff to view the recording or to obtain a copy. The recording of this hearing will be found on the CD of the July 19, 2007 proceedings.

In a business session subsequent to the public hearing on this request, the Commission took the following action.

Form District Change

On a motion by Commissioner Wells-Hatfield, the following resolution was adopted:

WHEREAS, The Louisville Metro Planning Commission finds that, based upon testimony and evidence submitted during the public hearing, Land Development and Transportation Committee review, the staff report and the file of the case that the proposed change is compliant with, and implements one of the goals of the

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Old Henry Small Area Study (Guiding Principle 8), therefore the form district change meets the applicable goals and objectives of the Comprehensive Plan; and

WHEREAS, the Commission further finds that, based on the staff report, evidence and testimony presented at the public hearing, and the applicant's proposed findings of fact, that the proposed change in form district from Neighborhood Form District to Suburban Workplace Form District complies with the Cornerstone 2020 Comprehensive Plan because the Old Henry Road Subarea Plan, adopted in 2000, recommended that the boundary between the form districts follow the Bush Farm Road extension, with the Suburban Workplace Form District to the west of the road and the Neighborhood Form District to the east; because the form district boundary actually bisects the applicant's property in a random fashion west of the actual alignment of the Bush Farm Road extension; and because the proposed form district change would serve to relocate the form district boundary along the Bush Farm Road extension as intended by the Subarea Plan; and

WHEREAS, The Commission finds that the proposal has received preliminary approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Department of Public Works, and the Metropolitan Sewer District; and

WHEREAS, The Commission finds the proposal to be in conformance with all other applicable guidelines of the Comprehensive Plan; now, therefore, be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative council of the Louisville Metro Government that the change in Form District from Neighborhood to Suburban Workplace for Case No. 9007 on property described in the attached legal description be **APPROVED**.

The vote was as follows:

YES: Commissioners Ernst, Storm, Wells-Hatfield, Abstain, Blake, Hamilton, Howard, Queenan, and Fleischaker.

NO: No one.

NOT PRESENT: Commissioner Carlson.

ABSTAINING: No one.

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Zoning

On a motion by Commissioner Wells-Hatfield, the following resolution was adopted:

WHEREAS, The Louisville Metro Planning Commission finds that based upon testimony and evidence submitted during the public hearing, Land Development and Transportation Committee review, the staff report and the file of the case that the proposed land use is compatible since the area is characterized by a predominantly commercial zoning pattern created when the Old Henry Crossings development was approved under docket 9-99-98. Given that the approved use (hotels) is a similarly intense commercial use to the proposed use (two restaurants, a retail building and a bank), as well as the access to a major arterial street, this development appears compliant with the applicable Comprehensive Plan guidelines; and

WHEREAS, the Commission further finds that the application for a change in zoning complies with Guideline 1 of the Cornerstone 2020 Comprehensive Plan because the Neighborhood Form may contain, at appropriate locations, neighborhood centers with a mixture of uses such as offices, retail shops, restaurants and services; because Old Henry Crossing is at a scale that is appropriate for nearby neighborhoods; because the development provides for accessibility and connectivity between adjacent uses and neighborhoods by automobile, pedestrian, bicycles and transit; because the Suburban Workplace is a form characterized by predominantly industrial and office uses where the buildings are set back from the street in a landscaped setting; because Suburban workplaces often contain a single large-scale use or a cluster of uses within a master planned development; because the proposed rezoning complies with both the Neighborhood and Suburban Workplace Form Districts; because the subject property lies directly to the east of the I-265 interchange on Old Henry Road and is within an existing activity center that was created when the rezoning for Old Henry Crossing was approved; because the proposed development will provide a mixture of uses that will serve area neighborhoods and adjacent workplaces, and will complement the other uses within the overall development; because the site lies in the center of Old Henry Crossing, a large master planned development;

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because the proposed buildings will incorporate a high level of architectural design, consistent with the approved master plan, which will include brick and masonry facades, windows, entryways, and signage that is consistent throughout the development; because the applicant has also planned for well-landscaped grounds with aesthetically interesting pedestrian access throughout; because sidewalks are provided through the subject site and to adjacent properties; because the applicant has agreed to work with Metro Parks and KDOT regarding a proposed loop trail between Berrytown and Floyds Fork Park; because the proposed development will promote shorter commute times because it will capture drive-by trips along Old Henry Road; because the development provides an adequate level of vehicular, pedestrian, and bicycle connectivity; because the Old Henry Subarea Plan Guiding Principle No. 6 recommends that service uses which support the workplace should be located within or adjacent to workplace areas identified in the Subarea Plan; because Guiding Principle No. 7 provides that neighborhood commercial is appropriate west of Bush Farm Road, provided the development maintains a high level of architectural design; and because the proposed restaurants, bank, and neighborhood-serving retail uses are consistent with the recommendations of the Subarea Plan and will ensure the architectural quality of the development will be maintained; and

WHEREAS, the Commission further finds that application for a change in zoning complies with Guideline 2 of the Cornerstone 2020 Comprehensive Plan because the subject site is located in an existing activity center on Old Henry Road, a minor arterial, just east of the I-265 interchange; because the Old Henry Road Subarea Plan estimated that the area will be home to 8,000 residents and 23,000 employees, demonstrating that there will be a substantial market for personal service, convenience, and neighborhood commercial services; because the provision of a mixture of compatible uses within Old Henry Crossing within close proximity to the Old Henry neighborhoods will serve to decrease traffic congestion by reducing the number and length of vehicle trips from home to shops; because Old Henry Crossing incorporates focal points and significant landscaping, pedestrian connections, and shared parking; because parking is located to the sides and rear of the buildings on the subject property; because the renderings submitted demonstrate that the buildings will be articulated to provide visual interest and will include brick and masonry facades, windows, transparent doorways and entry areas, and other animating features; and because a center of this type will encourage vitality and a sense of place in an area currently lacking commercial opportunities; and

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WHEREAS, the Commission further finds that the application for a change in zoning complies with Guideline 3 of the Cornerstone 2020 Comprehensive Plan because the subject property is located on Old Henry Road east of the I-265 interchange; because the property lies at the center of Old Henry Crossing, a master-planned development, with C-1 property to the east and west, CM and M-3 property to the south, and OR-3 property across Old Henry Road to the north, and will cause no adverse impacts to the surrounding area; and

WHEREAS, the Commission further finds that the application for a change in zoning further complies with Guideline 3 because the proposed development will incorporate site design and architectural quality compatible with the character of the Neighborhood and Suburban Workplace Form Districts; because the subject site will provide a parkway buffer area along Old Henry Road and landscape buffer areas which will contain plantings in excess of the minimum requirements of the Land Development Code; because the vehicle use areas will likewise contain interior landscape areas with significant landscape plantings; because the proposed buildings are oriented toward Old Henry Road and the adjacent access easement to the east of the site; because the building facades will be constructed of brick and masonry material and will incorporate animating features as previously mentioned; and because parking is located to the sides and rear of the buildings and will be adequately buffered from Old Henry Road; because the layout of the development will harmonize its integration into the overall master plan for Old Henry Crossing; and

WHEREAS, the Commission further finds that the application for a change in zoning further complies with Guideline 3 because the proposed development will provide neighborhood needs, reduce vehicle miles traveled, and forward the goal of promoting economic development along established corridors; because the development will provide neighborhood serving uses that minimize land use incompatibilities and the impact on public facilities; because the proposed development will provide services that are responsive to the specific needs of the residents of this area; because outdoor lighting and signage will meet the requirements of the Land Development Code and will be consistent throughout the entire Old Henry Crossing development; and because parking is designed to be safe and simple, and will utilize the practice of shared parking to minimize impervious land surfaces; and

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WHEREAS, the Commission further finds that the application for a change in zoning complies with Guidelines 4 and 5 of the Cornerstone 2020 Comprehensive Plan because the proposed development provides open space within the community, and helps establish a pedestrian system of walkways linking living areas, shopping, and other focal points as part of the overall master plan; because the applicant has agreed to work with Metro Parks and the Kentucky Department of Transportation on a proposed loop trail that will link Berrytown and Floyds Fork Park; because parkway and landscape buffer areas are provided on the site and throughout the entire development which include extensive landscape plantings; and because there are no environmental limitations on the subject property; and

WHEREAS, the Commission further finds that the application for a change in zoning complies with Guideline 6 of the Cornerstone 2020 Comprehensive Plan because the Old Henry Road Subarea Plan estimated that the area will be home to 8,000 residents and 23,000 employees, demonstrating that there will be a substantial market for personal service, convenience, and neighborhood commercial services; because the study projected an estimated 33,000 trips per day on Old Henry Road in the future; and because the proposed development will provide land uses necessary to meet the needs of the area workplaces and residential neighborhoods; and

WHEREAS, the Commission further finds that the application for a change in zoning complies with Guidelines 7, 8, and 9 of the Cornerstone 2020 Comprehensive Plan because the site is located on Old Henry Road, a minor arterial, in direct proximity to the I-265 interchange; because this portion of Old Henry Road is a four-lane highway, with adequate carrying capacity for the traffic that will be generated by the development on the subject site; because the developer has made extensive roadway improvements to Old Henry Road in conjunction with the development of Old Henry Crossing; and because Bush Farm Road will be extended through the site as part of the overall Old Henry Crossing development, and the extension of Old Henry Road to Crestwood is in the Kentucky Department of Transportation's six-year plan; and

WHEREAS, the Commission further finds that the application for a change in zoning further complies with Guidelines 7, 8, and 9 because access to the subject site remains unchanged from what was approved under the general development plan for Old Henry Crossing; because there will be no direct access

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from the subject property to Old Henry Road, rather access to the site is via an interconnected system of internal cross-access easements that connect to Old Henry Road in a few limited locations; because the proposed development ensures proper functioning of internal circulation and appropriate access to Old Henry Road; because the entrances to the site are located to facilitate safe vehicular and pedestrian access to and from adjacent land uses; and because parking will be provided in accordance with the Land Development Code, and is located to the sides and rear of the proposed buildings in character with the Neighborhood and Suburban Workplace Districts; and

WHEREAS, the Commission further finds that the application for a change in zoning further complies with Guidelines 7, 8, and 9 because there is only a slight variation in trip generation between the proposed bank, retail, and restaurant uses and the previously approved hotels on the subject property; because the Trip Generation Study showed that the proposed bank/retail/restaurant uses, will have 33 fewer trips in, and 15 fewer trips out during AM peak hours than the approved hotels; because the same study showed that during the PM peak hours, the proposed bank/retail/restaurant uses will generate 104 more trips in, and 75 more trips out than the hotels; because most of the traffic going to the proposed development is already on the streets; and because the proposed development itself will not significantly increase traffic as it is designed to serve the adjacent workplaces and neighborhoods and will capture drive-by trips; and

WHEREAS, the Commission further finds that the application for a change in zoning further complies with Guidelines 7, 8, and 9 because sidewalks will be built throughout the entire development and along Old Henry Road, Old Henry Trail, and Bush Farm Road to provide adequate pedestrian linkages to and through the development; because the developer will work with Metro Parks and the Kentucky Department of Transportation on a proposed loop trail between Berrytown and Floyds Fork Park; and because bicycle racks are provided on each of the lots in a convenient location in front of the buildings in accordance with the Land Development Code; and

WHEREAS, the Commission further finds that the application for a change in zoning further complies with Guidelines 7, 8, and 9 because by providing a mixture of compatible uses, the proposed development will enable area residents and future employees to minimize vehicular miles traveled, as well as total travel time, in order to minimize air pollution and to conserve fuel; because the

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development is located to take advantage of the existing transportation system to complement the overall development of the area; and because the subject site is located where adequate infrastructure access exists for employees, residents, and movement of goods being within close proximity of the I-265/Old Henry Road interchange; and

WHEREAS, the Commission further finds that the application for a change in zoning complies with Guidelines 10 and 11 of the Cornerstone 2020 Comprehensive Plan because drainage control measures will be implemented to adequately handle stormwater runoff in accordance with the drainage plans for Old Henry Crossing, which were approved by the Metropolitan Sewer District and Army Corps of Engineers; because detention methods will be utilized throughout the overall development to prevent increased runoff; because the subject site is not located in the floodplain, and contains no streams, wetlands, or waterways on the site; and because an erosion prevention and sediment control plan will be implemented prior to construction utilizing best management practices as required by the Metropolitan Sewer District; and

WHEREAS, the Commission further finds that the application for a change in zoning complies with Guideline 12 because the proposal represents an efficient land use pattern and utilizes current traffic patterns; because the proposed development will enable and promote a reduction in vehicle miles traveled and increased pedestrian travel in an effort to reduce the air impacts of the development; because the mixture of uses being proposed on the subject property will also aid in reducing commuting time and transportation-related air pollution associated with stop and go traffic; because the existing and proposed roadway infrastructure provides adequate capacity for the minimal additional traffic this development will generate; and because the updated traffic generation and distribution study prepared by the developer at the request of the Air Pollution Control District, comparing what was previously approved on the subject site with what is currently proposed demonstrates that the current bank, retail, and restaurant proposal will generate fewer AM peak hour trips and slightly more PM peak hour trips than the previously proposed hotels on this site; and

WHEREAS, the Commission further finds that the application for a change in zoning complies with Guideline 13 of the Cornerstone 2020 Comprehensive Plan because the subject site will be exceptionally landscaped and will contain plantings far above the requirements of the Land Development Code, in keeping

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with the high degree of landscaping throughout all of old Henry Crossing; because the site will provide a parkway buffer along Old Henry Road that varies in width from 15 to 44 feet with a berm, and a 10-foot landscape buffer area along the east property line; because the buffer areas and medians will contain substantial landscape plantings in excess of the Land Development Code; because interior landscaping is provided to enhance the buildings, break up the parking areas, and enhance the aesthetics of the site; because a total of 10,914 square feet of interior landscape area will be provided, which exceeds the requirements of the Land Development Code by more than 2,700 square feet; and because a total of 72 Type A trees will be planted on the site, bringing the tree canopy to 51,840 square feet, almost 9,000 square feet more than what is required by the Land Development Code; and

WHEREAS, the Commission further finds that the application for a change in zoning complies with Guidelines 14 and 15 of the Cornerstone 2020 Comprehensive Plan because the subject property is served by existing infrastructure which has adequate carrying capacity for the proposed development; because the developer has made significant roadway improvements and has extended sewers to the property; because all necessary utilities, including water, electricity, telephone, and cable, are available; and because the development has an adequate supply of potable water and water for fire-fighting purposes and is served by the Middletown Fire Protection District; and

WHEREAS, The Commission finds that the proposal has received preliminary approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Department of Public Works, and the Metropolitan Sewer District; and

WHEREAS, The Commission finds the proposal to be in conformance with all other applicable guidelines of the Comprehensive Plan; now, therefore, be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **RECOMMEND** to the legislative council of the Louisville Metro Government that the change in zoning **from OTF Office Tourist Facility to C-1 Commercial (2.0 acres) and C-2 Commercial (2.91 acres) for Case No. 8735** on property described in the attached legal description be **APPROVED**.

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The vote was as follows:

YES: Commissioners Ernst, Storm, Wells-Hatfield, Abstain, Blake, Hamilton, Howard, Queenan, and Fleischaker.

NO: No one.

NOT PRESENT: Commissioner Carlson.

ABSTAINING: No one.

Parking Waiver

On a motion by Commissioner Wells-Hatfield, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds, based on the staff report, evidence and testimony presented at the public hearing, and the applicant's proposed findings of fact, that the entirety of Old Henry Crossing is subject to a reciprocal access and parking agreement which allows for joint and shared parking among the various lots, including Lots 9A, 9B, 10A, and 10B; the parking waiver applies only to Lots 10A and 10B because the proposed parking on these lots exceeds the maximum allowed by the Land Development Code by a total of 28 spaces; there are 68 fewer parking spaces provided on Lot 9A than the maximum parking allowed on this lot; and there are 66 fewer spaces provided on Lot 9B than the maximum allowed by the Land Development Code; and

WHEREAS, the Commission further finds that the uses on Lots 9A, 9B, 10A, and 10B will share parking by virtue of the reciprocal access and parking agreement, the requested waiver to allow the parking on Lots 10A and 10B to exceed the maximum by a total of 28 spaces is justified as the parking provided on Lots 9A and 9B is below the maximum by 134 spaces; and therefore, the excess parking provided on Lots 10A and 10B will compensate for the reduced parking on Lots 9A and 9B; and

WHEREAS, the Commission further finds that the requested waiver is the minimum necessary to afford relief as the total number of parking spaces on the entire development site is 106 spaces less than the maximum allowed by the Land Development Code; and because a parking study submitted with this

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application demonstrates that the parking provided on the development site is needed to accommodate the proposed uses; because the development will utilize shared access and parking; and

WHEREAS, the Commission further finds that the proposed parking waiver complies with the Cornerstone 2020 Comprehensive Plan, which encourages accessibility, connectivity, and shared parking between adjacent uses in both the Neighborhood and Suburban Workplace Form Districts; because the site is completely surrounded by nonresidential property and, therefore, the parking waiver will cause no adverse impacts to the surrounding area; because parking on the site is located to the sides and rear of the buildings and is adequately buffered from Old Henry Road; and because a substantial amount of interior and perimeter landscaping is provided to enhance the buildings, break up the parking areas, and enhance the aesthetics of the site; and

WHEREAS, the Commission further finds that the applicant made a good faith effort to provide as few parking spaces as possible on the site, on other property under the same ownership, or through joint use provisions; and

WHEREAS, the Commission further finds that the requested waiver is the smallest possible increase of parking spaces that would accommodate the proposed use; and

WHEREAS, the Commission further finds that no negative impact will result from granting this waiver, since the requirements found in Table 9.1.2 do not accurately depict the parking needs of the proposed use and the requested reduction will accommodate the parking demand to be generated by the proposed use; and

WHEREAS, The Commission finds that the requested waiver is in conformance with all other applicable guidelines of the Comprehensive Plan; now, therefore, be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **GRANT** a waiver of **Section** **for Case No. 8735** to permit the bank and retail lots to exceed the maximum parking permitted by code.

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The vote was as follows:

YES: Commissioners Ernst, Storm, Wells-Hatfield, Abstain, Blake, Hamilton, Howard, Queenan, and Fleischaker.

NO: No one.

NOT PRESENT: Commissioner Carlson.

ABSTAINING: No one.

Variance

On a motion by Commissioner Wells-Hatfield, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds, based on the staff report, evidence and testimony presented at the public hearing and the applicant's proposed findings of fact, that granting the variance will not adversely affect the public health, safety or welfare because the property lies at the center of Old Henry Crossing, a master-planned development, with C-1 property to the east and west, CM and M-3 property to the south, and OR-3 property across Old Henry Road to the north; because the subject property is in the Neighborhood Form District, but the property immediately to the west of the site is in the Suburban Workplace Form District; because the building height will be consistent with buildings on adjacent properties within Old Henry Crossing, because restaurants to the west are in the Suburban Workplace Form District and are permitted to be 45 feet in height and the retail building to the south is permitted to be 30 feet in height; because the Land Development Code allows nonresidential buildings in the Neighborhood Form District that are 30,001 to 80,000 square feet to be 35 feet in height and residential buildings in the Neighborhood Form District to be 35 feet in height; and because the proposed building height of 32 feet for the bank is, therefore, less than the maximum permitted height in the Neighborhood Form District; and

WHEREAS, the Commission further finds that granting the variance will not adversely affect the public health, safety or welfare because the proposed bank on Lot 10A will incorporate site design and architectural quality compatible with the character of the Neighborhood and Suburban Workplace Form Districts;

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because the bank will be oriented toward Old Henry Road with parking to the sides and rear of the building; because the building facade will be constructed of brick and masonry material and will incorporate architectural features such as windows and entryways consistent with the overall master plan for Old Henry Crossing; and because landscape buffer areas will be provided along the north and east property lines and interior landscape areas will be provided within the parking lot, all of which will contain significant plantings to further enhance the aesthetic character of the site; and

WHEREAS, the Commission further finds that granting the variance will not alter the essential character of the general vicinity because the site is located at the center of Old Henry Crossing and is surrounded on all sides by non-residential property; because the proposed variance of 7 feet to allow the bank to be 32 feet in height is consistent with building heights permitted on the immediately adjacent properties; and because the proposed bank will be compatible in terms of size, height, scale, and architectural design with the surrounding buildings in Old Henry Crossing; and

WHEREAS, the Commission further finds that granting the variance will not cause a hazard or a nuisance to the public because the building will be lower than the maximum permitted height of 35 feet for residential structures and large non-residential structures in the Neighborhood Form District; because a building height of 32 feet is consistent with the 30-foot building height of the retail building to the south, and less than the maximum 45-foot building height which is permitted on the property directly to the west; because the proposed bank will incorporate site design and architectural quality compatible with the character of the Neighborhood and Suburban Workplace Form Districts; because the landscape buffer areas are provided along the north and east property lines and interior landscape areas are provided within the parking lot, which serve to enhance the aesthetic character of the site; and because the subject site is completely surrounded by non-residential properties so the height variance will not adversely impact adjacent properties; and

WHEREAS, the Commission further finds that granting the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because the maximum permitted height for residential buildings and large non-residential buildings in the Neighborhood Form District is 35 feet; and because the bank will be consistent with buildings on the adjacent properties in terms of

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size, height, scale, and architectural design with the pattern of development in the general vicinity; because the proposed development will be compatible with the surrounding area and will not cause any adverse impacts to surrounding properties; and

WHEREAS, the Commission further finds that the variance arises from special circumstances, which do not generally apply to land in the general vicinity because the location of the property in the center of the Old Henry Crossing development, being completely surrounded by non-residential property, and the Suburban Workplace Form District directly to the west of the site, all constitute special circumstances that do not generally apply to land in the general vicinity; and

WHEREAS, the Commission further finds that the strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship because if required to limit the building height on Lot 10A to 25 feet, the applicant will not be able to construct the proposed bank on this site; and because applying a building height on this lot to a height that more restrictive than anything else in the vicinity does not allow the applicant to reasonably use this lot in a manner similar to other properties in the surrounding area; and

WHEREAS, the Commission further finds that the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation from which relief is sought because Old Henry Crossing was approved in 2001, prior to the adoption of the Land Development Code; because the new Land Development Code, which went into effect in 2003, subsequently imposed a more restrictive height limitation on the subject property; and because the bank on Lot 10A is proposed to be only 32 feet in height, in contrast to the previously approved hotels, which were proposed to be three to four stories in height; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **GRANT** a variance to permit a variance of 7 feet to allow the proposed bank to be 32 feet in height, **for Case No. 8735**.

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The vote was as follows:

YES: Commissioners Ernst, Storm, Wells-Hatfield, Abstain, Blake, Hamilton, Howard, Queenan, and Fleischaker.

NO: No one.

NOT PRESENT: Commissioner Carlson.

ABSTAINING: No one.

Landscape Waivers (to permit a variable landscape/parkway buffer along Old Henry Road)

On a motion by Commissioner Wells-Hatfield, the following resolution was adopted:

WHEREAS, the Louisville Metro Planning Commission finds, based on the staff report, evidence and testimony presented at the public hearing and the applicant's proposed findings of fact, that the subject property lies just to the east of the I-265 interchange and is part of a larger mixed use development known as Old Henry Crossing, which was rezoned in 2001 in Docket No. 9-99-98; that Section 10.2.9 of the LDC (Table 10.2.6) requires vehicle use areas of over 30,000 square feet within the Neighborhood and Suburban Workplace Form Districts to provide a landscape buffer area of 15 feet in width; that the applicant is requesting a waiver of the 15-foot landscape buffer area required by Section 10.2.9 along the vehicle use area (VUA) adjacent to Terra View Trail, a private access easement; that the applicant is also requesting a waiver of Section 10.3.5.A.1 of the LDC, which requires a 30-foot parkway buffer along Old Henry Road; that the applicant is proposing to reduce the parkway buffer area to 15 feet on a portion of the Old Henry Road frontage, but will offset this reduction by providing a wider buffer area (up to 44 feet) along other portions of the frontage; and that the total square footage of the buffer area provided will be equal to that which would have been provided if the entire parkway buffer were 30 feet in width; and

WHEREAS, the Commission further finds that the requested waivers to reduce the landscape/parkway buffer areas will not negatively impact adjoining property owners; the applicant owns the property directly to the east of the access

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easement, which is zoned C-1 Commercial, and plans to construct retail buildings and restaurants on the property which will be compatible with buildings on the subject property; the properties to the southeast and to the north are also owned by the applicant, and are zoned CM Commercial Manufacturing and OR-3 Office/Residential, respectively; the quarry lies to the southwest on property that is zoned M-3 Industrial; and the VUA and access easement along which the landscape buffer area waiver is requested are internal to the Old Henry Crossing development so there will be no adverse impacts to adjacent properties; and

WHEREAS, the Commission further finds that, due to the way the developer is creating the access easements on a separate lot, the south property line actually bisects the VUA on the restaurant lots, therefore, it is not possible to provide a landscape buffer area along the south property line of the site; the applicant is, however, providing a 10-foot landscape buffer area on the south side of the access easement between the pavement and the adjacent properties to the south as well as multiple landscape islands in the parking area along the north side of the easement; and

WHEREAS, the Commission further finds that the requested waiver of Section 10.3.5.A.1 complies with Cornerstone 2020 Comprehensive Plan and LDC requirements because the applicant is proposing to reduce the width of a few portions of the parkway buffer area to 15 feet; because, to accommodate for the reduction, the applicant is providing a wider buffer area up to 44 feet along other portions of the frontage such that the total buffer area provided will equal that which would have been provided if a constant 30-foot parkway buffer area were provided; because the applicant will install landscaping on the site that exceeds the minimum requirements of the Land Development Code; because there is an additional 86 feet of undeveloped right-of-way along the entire frontage of the property between the property line and the edge of pavement of Old Henry Road, and , thus, there will effectively be a minimum of 100 feet of buffer area between Old Henry Road and the subject site, further mitigating the impact of the requested waiver; and

WHEREAS, the Commission further finds that the LDC Waivers comply with Cornerstone 2020 Comprehensive Plan and LDC requirements because the development will provide a significant amount of landscape plantings in excess of the requirements of the Land Development Code on the individual sites and

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within the roadway medians; because the subject site is compatible with the surrounding uses and incorporates an exceptionally high level of architectural design; and the proposal's compliance with the Comprehensive Plan is more fully detailed in the justification statement and proposed findings of fact that accompany the change in zoning application; and

WHEREAS, the Commission further finds that the requested waivers are the minimum necessary to afford relief to the applicant because the applicant had to redesign the subject site for retail and restaurant usage because the hotels expressing interest in the property were not up to the applicant's design standards; because, as a result of the site redesign, the applicant is required to make some minor adjustments in the buffer areas provided on this site; and because the subject site and the development as a whole provide buffering, plantings, interior landscape islands, berming, and landscaped medians which far exceed the minimum requirements of the Land Development Code; and

WHEREAS, the Commission further finds that the applicant is accommodating for the reduced buffer areas by providing larger buffer areas on other portions of this site as well as additional landscape plantings; the total tree canopy provided on the site is 51,840 square feet, which exceeds the tree canopy requirement of the Land Development Code by almost 9,000 square feet; the subject site contains over 2,700 square feet more interior landscape area than required by the Land Development Code; the applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived, resulting in a net beneficial effect; and the proposed landscaping on the subject property meets the spirit and intent of the Land Development Code as it is a substantial improvement over the minimum requirements of the landscape regulations; now, therefore be it

RESOLVED, that the Louisville Metro Planning Commission does hereby **GRANT** a waiver of a portion of required 30-foot parkway buffer along Old Henry Road, and a waiver of a portion of the landscape buffer area along the vehicle use area adjacent to Terra View Trail, **for Case No. 8735**.

The vote was as follows:

YES: Commissioners Ernst, Storm, Wells-Hatfield, Abstain, Blake, Hamilton, Howard, Queenan, and Fleischaker.

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NO: No one.

NOT PRESENT: Commissioner Carlson.

ABSTAINING: No one.

Revised Detailed District Development Plan

On a motion by Commissioner Wells-Hatfield, the following resolution was adopted:

RESOLVED, That the Land Development and Transportation Committee does hereby **APPROVE** the Revised Detailed District Development Plan for **Case No. 8735**, subject to the above listed conditions of approval and/or binding element(s) as recommended by Planning Commission staff.

Standard Binding Elements (applicable to all cases of this type)

1. The development shall be in accordance with the approved district development plan and binding elements unless amended pursuant to the Land Development Code. Modifications to the binding element(s) shall be submitted to the Planning Commission or its designee for review and approval; any modifications not so referred shall not be valid.
2. The square footage of the development shall not exceed a 7,500 square foot restaurant on Lot 9A and 9B, a 3,479 square foot bank on Lot 10A and a 5,464 square foot retail building on Lot 10B.
3. Signs shall be in accordance with Chapter 8 of the LDC.
4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
5. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.

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6. Prior to issuance of a permit (including but not limited to building, parking lot, change of use, site disturbance, alteration permit or demolition permit):
 - a. The development plan must receive full construction approval from Louisville Metro Department of Inspections, Permits and Licenses, Louisville Metro Public Works and the Metropolitan Sewer District.
 - b. The property owner/developer shall obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
7. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
8. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
9. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the (date) LD&T / PC meeting.
10. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency, from an engineer, or other qualified professional stating that the lighting of the proposed development is in compliance with Chapter 4 Part 1.3 of the land

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development code and shall be maintained there after. No building permits shall be issued unless such certification statement is submitted. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.

11. Street name signs shall be installed prior to requesting a certificate of occupancy for any structure. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.

Binding elements unique to this case

12. The applicant shall submit building elevations or renderings of the proposed restaurants on Lots 9A and 9B for Development Review Committee review prior to the issuance of building permits on Lots 9A and 9B.
13. The applicant shall submit a joint cross over and access agreement for the parking shown within the Terra View Trail access easement.
14. an additional binding element stating that they will come back to the Planning Commission for approval of any building designs that have not yet been finalized.

All binding elements and/or conditions of approval stated in this report are accepted in total without exception by the entity requesting approval of this (these) development item(s).

The vote was as follows:

YES: Commissioners Ernst, Storm, Wells-Hatfield, Abstain, Blake, Hamilton, Howard, Queenan, and Fleischaker.

NO: No one.

NOT PRESENT: Commissioner Carlson.

ABSTAINING: No one.